

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

(FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

### **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

This case was previously before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 16, 2013 appellant, a 64-year-old mail processor, filed a notice of recurrence (Form CA-2a), under OWCP File No. xxxxxx217, alleging that he had sustained a recurrence of his October 30, 2008 accepted employment-related conditions of bilateral carpal tunnel syndrome and right de Quervain's tenosynovitis on November 23, 2013. He indicated that he returned to limited-duty work on November 4, 2013, but stopped work again on November 23, 2013 because the position required him to use his thumbs and hands in excess of four hours per day.

A September 5, 2013 rehabilitation assignment offer for the position of customer care agent indicated that the duties required "occasional simple grasping (mouse); occasional pushing/pulling using a computer mouse, interchangeable to right/left side as needed for comfort; and occasional fine manipulation or use of single finger when using a keyboard." The employing establishment noted that the learning process encompassed three weeks of training with the first two weeks in a classroom setting and the third week with an instructor on "live" customer calls.

On March 19, 2014 OWCP determined that appellant had sustained a new injury and converted his claim from a recurrence of disability to a claim for an occupational disease (Form CA-2). By decisions dated May 15 and August 15, 2014, it denied his occupational disease claim.

On December 5, 2014 appellant, through counsel, filed an appeal with the Board.

By decision dated April 3, 2015, the Board set aside OWCP's August 15, 2014 decision denying appellant's claim for a new injury and remanded the case for OWCP to combine the current case record, OWCP File No. xxxxxx656, with OWCP File No. xxxxxx217, and determine whether he sustained either a recurrence of disability due to his October 30, 2008 employment injury or a new employment injury.<sup>5</sup>

By decision dated June 14, 2016, OWCP denied appellant's recurrence claim finding that the evidence of record did not establish a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the limited-duty job requirements.

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<sup>4</sup> Docket No. 17-0120 (issued June 14, 2018); Docket No. 15-0359 (issued April 3, 2015).

<sup>5</sup> Docket No. 17-0129 (issued June 14, 2018); Docket No. 15-0359 (issued April 3, 2015).

On October 25, 2016 appellant, through counsel, filed an appeal to the Board.

By decision dated June 14, 2018, the Board affirmed OWCP's June 14, 2016 decision denying appellant's claim for a recurrence finding that the evidence of record was insufficient to establish that his light-duty job requirements had changed such that the job requirements were no longer within his medical restrictions and he was unable to perform his limited-duty position.<sup>6</sup>

On June 4, 2019 appellant, through counsel, requested reconsideration arguing that OWCP had committed an error when the Board issued its June 14, 2018 decision because the evidence clearly established appellant's claim.<sup>7</sup> Counsel further submitted a narrative statement from appellant who indicated that the employing establishment was unprofessional and/or malicious when offering appellant a suitable job and continued to argue that he experienced permanent damage to his hands due to the repetitive nature of his limited-duty position.

By decision dated June 18, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>8</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>9</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>10</sup>

A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously

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<sup>6</sup> Docket No. 17-0120 (issued June 14, 2018). In an *Order Denying Petition for Reconsideration* (issued March 4, 2019), the Board denied appellant's petition for reconsideration of its June 14, 2018 decision finding that it failed to establish an error of fact or law warranting further consideration.

<sup>7</sup> OWCP has no jurisdiction to review a Board decision. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. See 20 C.F.R. § 501.6(d). Appellant had 30 days from the date of the Board's June 14, 2018 decision to file a petition for reconsideration with this Board of its decision. *Id.* at § 501.7. See also *C.M.*, Docket No. 19-1211 (issued August 5 2020); *B.B.*, Docket No. 14-0464 (issued June 4, 2014).

<sup>8</sup> This section provides in pertinent part: [t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>9</sup> 20 C.F.R. § 10.607.

<sup>10</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

considered by OWCP.<sup>11</sup> When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>12</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In his timely application for reconsideration, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP.<sup>13</sup> Although he submitted a new narrative statement and a statement from his representative, they merely reiterated contentions previously reviewed by OWCP. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>14</sup>

Moreover, appellant's request for reconsideration did not include relevant and pertinent new evidence in support of his June 4, 2019 request for reconsideration. The underlying issue is whether he submitted sufficient evidence to establish that his assigned duties exceeded his physical limitations or caused or aggravated his accepted conditions. However, appellant did not submit any additional evidence with his request for reconsideration. Because he did not provide any relevant and pertinent new evidence, he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>15</sup>

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>11</sup> *Id.* at § 10.606(b)(3).

<sup>12</sup> *Id.* at § 10.608(a), (b).

<sup>13</sup> *See T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>14</sup> 20 C.F.R. § 10.606(b)(3)(i)-(ii); *K.L.*, Docket No 08-2444 (issued June 12, 2009). Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

<sup>15</sup> *Id.* at § 10.606(b)(3)(iii); *see M.C.*, Docket No. 18-0841 (issued September 13, 2019); *D.P.*, Docket No. 17-0290 (issued May 14, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board